



493

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable L. A. Bauer
County Auditor
Cameron County
Brownsville, Texas

Dear Sir:

Opinion No. O-4394

Re: Under the facts submitted what is the proper distribution of the money received where a bail bond was forfeited due to the non-appearance of the defendant in a case in the Criminal District Court of Cameron County?

Your letter of recent date requesting the opinion of this Department on the question stated therein reads in part as follows:

"At the last term of the Criminal District Court of Cameron County a Bail Bond was forfeited due to non appearance of the defendant. Judgment was taken in the name of the State and execution issued against certain property.

"The sureties paid the full amount of the bond together with costs of the District Clerk.

"I am not certain as to the proper distribution of this forfeiture.

"Is the District Attorney entitled to 10% (Art. 950) and do we pay him direct or to the State Treasurer?

"Is the District Clerk entitled to 5% (Art. 950) commission?

Honorable L. A. Bauer, Page 2

"Is the Sheriff entitled to 5% (Art. 951)?

"What disposition should be made of the balance of this money?"

Cameron County has a population of approximately 81,227 inhabitants according to the 1940 Federal Census. The county officials of said county are compensated on an annual salary basis as authorized by Section 13 of Article 3912(e), Vernon's Annotated Civil Statutes.

Article 322, Vernon's Annotated Civil Statutes, provides in part:

" * * * . There shall also be elected a Criminal District Attorney for * * * the counties of Nueces, Kleberg, Kennedy, Willacy and Cameron."

The Criminal District Attorney who is elected by virtue of this statute is compensated by the State as authorized by Section 18 of Article 3912(e), Vernon's Annotated Civil Statutes.

Section 1 of Article 3912(e), supra, provides:

"No district officer shall be paid by the State of Texas any fees or commissions for any services performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee of commission for any service by him performed as such officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund or funds created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State,

Honorable L. A. Bauer, Page 3

but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties."

Section 5 of Article 3912(e) provides in part:

"It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all officials services performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. * * * "

The Code of Criminal Procedure particularizes each incident in the collection of forfeited recognizances and Bail Bonds. Without quoting these statutes, we only refer to them, namely, Article 424-440, inc., Vernon's Annotated Code of Criminal Procedure.

It is stated in Texas Jurisprudence, Vol. 5, page 924:

"The undertaking of the bail is an original undertaking for the appearance of the principal to answer the charge against him. If they do not have him in court according to the terms of their obligation, the undertaking stands forfeited, the proceeding to exact forfeiture being prescribed by statute.

" * * * ."

In order to compensate the county in which a criminal prosecution is had, provisions is made by the code (Article 949, Code of Criminal Procedure) for the payment to that county of the amount collected from forfeited Bail Bonds; the sums are not required to be paid into the State Treasury for the benefit of the State at large.

Honorable I. A. Bauer, Page 4

Article 949, supra, provides in part:

"Money collected by an officer upon recognizances, Bail Bonds and other obligations recovered upon in the name of the State * * * shall herewith be paid over by the officers collecting the same to the County Treasurer of the proper county after first deducting therefrom the legal fees and commissions for collecting the same."

Articles 950 and 951, Vernon's Annotated Code of Criminal Procedure, read as follows:

"Article 950. The district or county attorney shall be entitled to ten percent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the Clerk of the Court in which said judgments are rendered shall be entitled to five percent of the amounts of said judgments, to be paid out of the amount when collected."

"Article 951. The Sheriff or other officer, except the Justice of the Peace or his Clerk, who collects money for the State or county, except jury fees, under any provisions of this code, shall be entitled to retain five percent thereof when collected."

It is stated in Texas Jurisprudence, Vol. 19, page 816:

"The District or County Attorney is entitled to ten percent of all forfeitures collected for the State or county, upon judgments recovered by him. The right to such commissions has been held to be subordinate to the right of the governor to remit fines and forfeitures, and with them, all claims and commissions for attempting to collect the money. Commissions on adjudged forfeitures become due to the attorneys representing the State only when the money is collected, and they are to be taken out of such money; they are cost and cannot be taxes as such."

Honorable L. A. Bauer, Page 5

"The statute providing that the Clerk of the Court shall be entitled to five percent on all fines, for forfeitures or moneys collected for the State or County upon judgments recovered in the Court applies only to actions over which the criminal courts have jurisdiction, and which should be prosecuted in such courts, and not the judgments for money recovered in civil actions prosecuted in behalf of the State.

"Forfeitures may be collected in lawful money from the United States only, and when collected they must be paid over to the County Treasurer after deducting the legal fees and commissions."

522: It is stated in Texas Jurisprudence, Vol. 34, page

" * * * To entitle an officer to receive fees or commissions, the receipt thereof must have been provided for and the amount fixed by law; and he must have performed the services for which compensation has been specified. * * *"

In view of the foregoing you are respectfully advised that it is the opinion of this Department that the District Attorney, the District Clerk and the Sheriff are not legally entitled to personally receive any commission whatsoever, but such commissions when collected must be placed in the Officers' Salary Fund as required by Section 5 of Article 3912 (e), supra. You are further advised that no part of the money received by virtue of the forfeiture of the Bail Bond is paid to the State, but such money less the commissions authorized by law must be paid into the County Treasury..

It will be noted that the District Attorney is entitled to ten percent commission and the District Clerk is entitled to five percent commission and the Sheriff is entitled to five percent commission by virtue of the above mentioned statutes, however, as heretofore stated, these officials are not permitted or authorized by law to personally retain these commissions, but must pay them into the Officers' Salary Fund. The balance remaining after the deductions of the commissions authorized by

Honorable L. A. Bauer, Page 6

law should be paid into the Road and Bridge Fund of the county by virtue of Article 1626 and 1628, Vernon's Annotated Civil Statutes.

Trusting that the foregoing fully answers your inquiry,
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

AT:DW

APPROVED FOR ME, 1943

Gerard B. Hanna
ATTORNEY GENERAL OF TEXAS

